

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board)	
On Universal Service)	CC Docket No. 96-45
)	
Cellular South License, Inc.)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	DA 02-1465
Throughout Its Licensed Service Area)	
In the State of Alabama)	

**REPLY COMMENTS OF
THE ALABAMA PUBLIC SERVICE COMMISSION**

The Alabama Public Service Commission (APSC) respectfully submits its reply comments in the above-captioned matter. While the APSC does not have regulatory authority over CMRS providers in Alabama, we are concerned that the public interest standard required for ETC designation in the service territory of a rural company be thoroughly investigated by the FCC in this proceeding. The APSC issued its position on the certification of competitive providers in rural ILEC service areas in APSC Docket 25980. In that docket the Alabama Commission found that any carrier that desires designation as an ETC in the service area of a rural local exchange company must demonstrate “compelling circumstances” indicating that it is in the public interest to have an ETC other than the incumbent LEC in the service area of that rural incumbent LEC.¹

¹ *Implementation of the Universal Service Requirements of Section 254 of the Telecommunication Act of 1996*, Notice, APSC Docket 25980 (October 31, 1997)

Cellular South's petition for ETC designation is the second such petition that has been filed for rural service areas in Alabama by a CMRS provider. Additionally, both petitions seek to redefine service areas in some of the rural companies' service areas. The APSC has similar areas of concerns with Cellular South's petition that it raised in its comments in the RCC Holdings, Inc. petition for ETC designation in rural service areas of Alabama.²

The Cellular South petition affects the service areas of six rural telephone companies and the three non-rural companies in Alabama. The rural companies' service areas which Cellular South proposes to serve encompasses approximately 88,000 existing access lines which will generate projected high cost universal service funding for 2002 of approximately \$4,086,000.³ These calculations do not include the access lines or present USF funding that is related to the non-rural companies' service areas for which Cellular South also seeks ETC status.

Cellular South's petition raises additional concerns since it is petitioning for ETC status in four of the same rural company service areas that RCC proposes to serve in its ETC filing.⁴ In two of these four rural service areas, Butler and Millry Telephone Companies, Cellular South and RCC propose to serve the same wire centers. The APSC has serious concerns that such a concentration of providers in one rural LEC service

² Comments of the Alabama Public Service Commission filed in CC Docket 96-45, DA 02-746, May 23, 2002

³ Information obtained from NECA's October 1, 2001, filing with the FCC of the Universal Service Fund 2001 Submission of 2000 Study Results (Tab 8 – Universal Service Fund 2002 Comparison Rural Support, Current Rules column.)

⁴ RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout Its Licensed Service Area in the State of Alabama. CC Docket 96-45, DA 02-746

territory may not be in the public interest of the subscribers of the rural telephone company and may place undue burden on the Universal Service Fund.

The FCC's cost proxy model that was developed and used to determine universal service funding for the non-rural telephone companies clearly demonstrates how the telephone subscriber's in Alabama are widely dispersed throughout the state resulting in much higher costs to serve than in many other areas. The model showed that people in the western states tended to live in clusters in spite of the fact that these states have many remote areas. Thus the cost to serve customers in the western states is often lower than in a state like Alabama.

The rural companies included in this proceeding are small companies serving very rural environments. Five of the rural companies in whose territories Cellular South seeks to gain ETC status are small rural carriers with access line counts ranging from a low of 1,026 to a high of 13,985 lines. The access lines of these companies are primarily residential with very few business lines. These companies rely heavily on the universal service support they receive to provide quality service at affordable rates to the customers within their service areas. These companies would have to raise their rates or provide a lower quality of service if they lose any of their current funding. The customers of these rural companies could be adversely impacted by approving ETC status for Cellular South.

The APSC supports competitive telecommunication choices for all the consumers in Alabama that can be provided without diminishing their current services and choices. The copy of the petition we reviewed did not have a map attached, therefore, we could not determine Cellular South's current deployment of wireless facilities and the

percentage of its licensed areas or the rural ILECs licensed areas Cellular South presently serves. We agree with the FCC's determination in its Declaratory Ruling in Docket No. 96-45 that requiring a new entrant to provide service throughout a service area prior to designation as an ETC has the effect of prohibiting the ability of the prospective entrants from providing telecommunication services and would deprive the consumers in high-cost areas of the benefits of competition.⁵ We also believe, however, that it is important to determine if the new entrant is fulfilling or attempting to fulfill its present obligations in relationship to the wireless licenses it presently holds. The APSC does not presently regulate CMRS providers but has had authority in the past to address consumer related issues relating to wireless service. Many of the complaints the Commission received were related to the lack of coverage in rural areas. The lack of coverage in rural areas also raises serious concerns whether Cellular South presently has, or will acquire in a timely manner, the ability to provide access to emergency services in all of its rural service territories.

Additionally, it is not clear from its filing if Cellular South intends to provide for recovery of the state component portion of the Lifeline program and provide the maximum support presently available to eligible consumers from the incumbent LECs. The Alabama Commission has required its rural and non-rural carriers to provide Lifeline and Link-up services to the eligible low-income customers located in their service territories. The \$3.50 state component has been funded without a local rate additive. Cellular South indicates in its filing that it will provide the Lifeline and Linkup services

⁵ *Federal-State Joint Board on Universal Service: Western Wireless Corporation Petition for preemption of an Order Of the South Dakota Public Service Commission, Declaratory Ruling, CC Docket 96-45, FCC 0-248*

but it does not indicate if it will provide only the federally supported amount or the full amount currently available to the customer through the existing carriers programs.

Cellular South states in its Petition that “The Company intends to obtain high cost loop support funding in order to speed the delivery of advanced wireless services to Alabama’s citizens.”⁶ While the APSC appreciates Cellular South’s desire to provide advanced wireless services in Alabama, Cellular South cannot fund the provision of advanced services with high cost universal services funds. Advanced services are not included in the nine core services and functionalities identified by the FCC to be provided or funded through the universal service program.

The FCC indicated in previous orders on ETC designations that the concerns of competitors targeting only customers in lower cost areas and thus undercutting the incumbents ability to provide service to high cost customers has been addressed by allowing rural carriers to take the option of disaggregating and targeting high-cost support below the study area level. We would note that this is the first time these companies have had the ability or requirement to make this determination. The APSC has just recently started to receive the certification letters from the rural companies regarding their disaggregation elections. We are not certain these determinations made by the companies will in fact achieve the results expected by the FCC and the very small companies will have a hard time disaggregating their service areas.

Alabama is a net recipient of Universal Service Funds and fully appreciates the necessity and importance of this funding in providing access to telecommunication services to the consumers in rural high cost areas at affordable rates. However, we realize that these funds impose a cost on all subscribers of telephone services through the

assessments on their bills. The APSC shares the concerns expressed by Commissioner Kevin Martin in his statement in the order on Reconsideration in the ETC decision in the State of Wyoming⁷:

“As I have expressed elsewhere, I have concerns with the Commission’s policy of using universal service support as a means of creating “competition” in high cost areas. I am hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. This policy may make it difficult for any one carrier to achieve the economies of scale necessary to serve all customers in a rural area, leading to inefficient and/or stranded investment and a ballooning of the universal service fund”

The Act states in §254 (b)(3) that Consumers in all regions of the Nation, including low-income consumers and those in rural, insular and high cost areas, should have access to telecommunications and information services. The APSC does not believe, however, that Congress intended to subsidize multiple lines of different technologies used by the same subscriber when it provided for funding for universal access to telecommunication services. Cellular South will receive universal service funding based on the cost of the existing wireline carrier. The rural lines addressed by this petition are high cost lines. Funding a second line and possibly a third line in some areas to the same location is neither economical or in the spirit of the 1996 Act. The demands on the universal service fund have grown substantially since the 1996 Act. The fund size can not continue to increase unnecessarily.

⁶ *Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama* pg. 1

⁷ *Federal-State Joint Board on Universal Service: Petition for Reconsideration of Western Wireless Corporation’s Designation as an Eligible Telecommunications Carrier in the State Of Wyoming: Order on Reconsideration* , CC Docket 96-45, FCC 01-311, released October 19, 2001.

Cellular South argues⁸ and Cellular Telecommunications & Internet Association (CTIA) agrees⁹ that the public interest will be served if Cellular South's petition is granted because competition drives down prices and promotes the development of advanced communications. However, as the National Telecommunications Cooperative Association (NTCA) points out, Cellular South has not provided any indication that price of telecommunication service for rural subscribers in Alabama is high or that the rural carriers lag behind other carriers in introducing new services.¹⁰ The basic local service rates in the rural service areas in Alabama are essentially the same as the rates in the services areas of BellSouth and some of the rural carriers whose service territories are included in the petition presently provide DSL service to both business and residential customers.

The APSC agrees with NTCA's comments that Congress intended that the Commission and the states work together, specifically when one is considering altering the definition of a service area served by a rural telephone company.¹¹ This intention is clearly expressed in Section 214 of the Act. Even though the APSC may not have regulatory authority over the provision of service by CMRS providers it does have authority over the service areas of the rural telephone companies. The APSC is responsible for certifying the service territory of all wireline telecommunication providers in Alabama. The redefinition or reclassification of the rural service area boundaries that Cellular South is requesting in its petition causes concerns for the APSC. These service

⁸ See Cellular South Petition at 13-16

⁹ See CTIA comments at 4

¹⁰ See National Telecommunications Cooperative Association Comments, pg 2-3

¹¹ Comments of the National Telecommunications Cooperative Association , pg. 6

areas are extremely rural with high costs. One example is the Needham wire center in Butler Telephone Company's service territory. Both Cellular South and RCC Holdings have petitioned to have this wire center reclassified.¹² This wire center has only 13 business lines and 385 residential lines. If both petitions were approved there would be three providers eligible for universal service support in this very small high cost area and potentially all three could serve the same 398 access lines. This is an unnecessary drain on the Universal Service Fund and will actually increase cost to the subscriber of this area as well as all other subscribers of telecommunication services.

In conclusion, the APSC encourages the FCC to closely scrutinize the public interest concerns of granting ETC status to Cellular South in the rural companies' service territories in Alabama. We are concerned that funding second lines to the same subscriber in these rural high cost areas doubles the current subsidized cost of serving that customer and negatively affects those consumers who must pay to support the fund.

The disaggregation of the rural company's service areas is a new program and we can not be certain it will have the desired effect of limiting the possibility of cream skimming in the rural areas. The APSC may not have authority over the provision of service by CMRS providers in Alabama but we do have authority over the service territory boundaries of the rural telephone companies and have serious concerns with the proposed reclassification of wire centers in this petition. The APSC appreciates the opportunity to raise its immediate concerns with the petition. However, our comments

¹² RCC Holdings Inc , CC Docket 96-45, DA 07-746 Exhibit F; Cellular South License Inc; CC docket 96-45, DA 02-1465, Exhibit F

are limited by our lack of information on Cellular South's existing facilities deployment and service quality in Alabama and the limited time for comments in this proceeding.

Respectfully submitted:
Alabama Public Service Commission

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